

**SIXTH TRIENNIAL REVIEW OF THE TBT AGREEMENT:  
TRANSPARENCY IN THE IMPLEMENTATION OF THE TBT AGREEMENT**

Submission by the European Union

The following communication, dated 12 June 2012, is being circulated at the request of the delegation of the European Union.

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**I. INTRODUCTION**

1. Transparency in the TBT notification procedure is an important aspect in the operation and implementation of the TBT Agreement and has been subject to various recommendations and decisions of the TBT Committee.
2. The EU would like to take the opportunity of the Sixth Triennial Review of the TBT Agreement to contribute through this Communication to discussions between Members on further improvements that can be achieved on transparency in the future.
3. In this respect, the EU will first present its observations on the practical functioning of the TBT notification procedure and then outline its ideas for future improvements, notably through an improved WTO based IT system.

**II. THE EU'S OBSERVATIONS ON THE RESPECT OF THE NOTIFICATION OBLIGATIONS AND ON THE IMPLEMENTATION OF EXISTING RECOMMENDATIONS OF THE TBT COMMITTEE AS REGARDS TRANSPARENCY**

4. The notification procedure under the TBT Agreement has certainly become more important and effective in recent years. Looking at the figures, the number of TBT notifications has been growing exponentially. Whereas less than 400 draft texts had been notified in 1995, the year of the entry into force of the TBT Agreement, this number has more than tripled in the last years to attain a peak of 1491 notifications in 2009. Equally, the number of specific trade concerns discussed in the TBT Committee exploded in recent years.
5. One of the reasons for these increases is the fact that more and more WTO Members are notifying and are participating actively in the procedure. However, it can be observed that there are still many weaknesses in the procedure. On the occasion of the Fifth Triennial Review, the European Union<sup>1</sup> had submitted an overview of its observations on the functioning of the TBT notification procedure and what efforts the EU had made in order to give full effect to the relevant Committee's recommendations, modifying its internal practices where necessary with the aim of improving

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<sup>1</sup> At that time, "the European Communities".

transparency in the notification procedure<sup>2</sup>. Many of those observations are still valid: in particular, certain Members do not notify on a regular basis their technical regulations and conformity assessment procedures, or do not notify them at a draft stage. In the same vein, certain Members' Enquiry Points systematically do not answer any of the enquiries or comments received on individual notifications. This non-respect of the basic obligations seriously hampers the effectiveness of the procedure.

6. The TBT Committee has, through its successive Triennial Reviews, made many valuable recommendations which, when followed by WTO Members, significantly improve the implementation of the notification procedure. Examples are: allowance of a 60 to 90 day comment period, replies to be given in one of the three official languages of the WTO, direct accessibility of the notified text through a link in the notification format, sharing of unofficial translations, reply in writing to written comments, communication of adopted and published texts etc.

7. Not all Members follow, however, the agreed recommendations. Unfortunately, even simple, but important recommendations like the direct accessibility of texts or the communication of adopted texts are not always complied with.

8. The EU is also more and more often confronted in bilateral talks with the request that notifications should be sent bilaterally by email to other WTO Members, while this task is normally ensured by the WTO Secretariat (in accordance with Article 10.6 of the TBT Agreement). The reason for these requests seems to be that it often takes several days, occasionally much longer, before the Secretariat circulates a notification following its receipt.

9. The EU would also like to draw attention to the fact that not all WTO Members use the possibility to comment on notified draft technical regulations and conformity assessment procedures. This seems to be due, *inter alia*, to the Members' difficulties in coping with the increasing amount of notifications and related information transmitted through the Secretariat or the WTO IT system. For example, the EU has observed that many Members do not take note of additional information that the EU transmits following an original notification (such as information about modifications introduced by the legislators, communication of adopted texts, prolongation of certain measures etc.).

10. The EU itself encounters (and this despite a well functioning IT database) challenges linked to the high number of notifications. Other difficulties are linked to certain practices of Members in relation to the notification procedure. An illustrative example is the notification of a modification of an adopted text carried out through an addendum after the text of the original notification has been adopted. Since addenda are used for many other information purposes by WTO Members (such as additional information, communication of adopted text etc.), this practice does not permit an "automated" way of treating notifications, but requires that an officer in the national Enquiry Point receiving the notification open each and every addendum to determine if it is about a new notification (with a respective comment period) or not.

11. *In view of the above, the EU invites the Committee to stress again, in line with the conclusions of the Fifth Triennial Review under Section II, letter D, the importance of Members fully complying with the transparency obligations of the TBT Agreement and the recommendations concerning their implementation adopted by the TBT Committee.*

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<sup>2</sup> G/TBT/W/309

### III. THE WAY FORWARD: A COMMON, EFFICIENT AND WELL-FUNCTIONING IT SYSTEM

12. The EU believes that a decisive step forward with regard to enhanced effectiveness and transparency of the notification procedure would be to create a **common, efficient and well-functioning WTO-based IT system** that would give Members a common basis for available information and information exchange and would bring considerable improvements for the implementation of the notification procedure, including the existing obligations and recommendations.

13. It would help at a moment when some Members have already created their own TBT databases/websites, but are still in the process of developing them further, while others are about to develop their own IT systems. It would mean that many Members would not need to invest resources in the development of national, specific IT systems and would be of great benefit for those Members' which do not have the capacity to do so.

14. Based on the experience that the EU gained with the development of its own TBT database<sup>3</sup> (which is used by many other WTO Members) and with the development of the database for the EU's internal notification procedure<sup>4</sup>, which presents many similarities with the TBT notification procedure, the EU would like to submit in this paper some concrete proposals for consideration by the Committee about the functionalities that a common database should have.

#### A. POSSIBILITY FOR MEMBERS TO SUBMIT THE NOTIFICATION ONLINE IN ORDER TO REDUCE THE TIME BETWEEN THE SENDING OF THE NOTIFICATION TO THE SECRETARIAT AND ITS CIRCULATION TO MEMBERS

15. The TBT Committee has agreed that the reasonable time that Members are obliged to allow to other Members for comments according to Articles 2.9.4 and 5.6.4 of the TBT Agreement should be at least 60 days. This is a relatively short time period to react to often complex notifications, which frequently require translation of the notified draft legislation in order to be properly assessed.

16. It is therefore of utmost importance for the respect and efficiency of the procedure that once a Member has carried out its notification, the notification is circulated promptly to other Members. Such a prompt circulation would also avoid the still unresolved question (as discussed at the occasion of the Fifth Triennial Review) whether the 60-day comment period starts with the notification by the notifying Member to the WTO Secretariat or with the circulation by the Secretariat to other Members. The EU would therefore be in favour of a system that allows the WTO Secretariat to circulate the received notifications promptly.

17. The EU is aware that the SPS Notification Submission System ("SPS NSS"), as presented to the TBT Committee at its meeting of March 2011 already allows for electronic notification by those Members wishing to use this facility. The EU would be in favour of the use of such a system for TBT notifications. The EU has, however, observed one disadvantage with the SPS NSS. The electronic notification is carried out through a Word document to be filled in on-line and it is therefore not possible to upload an already filled out notification form. In the EU the filling in of the notification forms is, like in many other WTO Members, done by the services responsible for developing legislation (and having at their disposal the detailed information that the notification form requires) and by the EU TBT Notification and Enquiry Point. The EU would therefore favour a system that would permit the filling in of the form by different actors and the direct uploading of the form, and would not oblige the Notification Authority to copy and paste all information in another online format

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<sup>3</sup> <http://ec.europa.eu/enterprise/tbt/>

<sup>4</sup> <http://ec.europa.eu/enterprise/tris/>

in order to be able to actually submit the notification to the WTO Secretariat. Such a "copy and paste" obligation does not only require additional time and human resources, but is also an additional source for human errors that should be avoided.

18. From its experience with the database for the internal EU notification procedure, the EU can report that it is possible to create an information system that easily allows electronic notification by Members using a PDF format document<sup>5</sup>: Such a document can be easily transmitted and completed by WTO Members' national authorities (and thus replace the current Word document) and then be uploaded to an information system without the necessity for the Notification Authority to copy and paste the information in an online form.

19. It could be envisaged that the notification submitted by a Member is either immediately circulated to the other Members without any intervention by the WTO Secretariat or that the WTO Secretariat would carry out a quick check, without, however, delaying the circulation of the notification more than one day.

20. Electronic submission can remain optional and Members not wishing to use it can of course continue to transmit the notifications by email, fax etc. However, in this case, the given comment period should start as of the date of circulation of the notification to Members by the WTO Secretariat and not as of the date of the simple transmission to the WTO Secretariat by the notifying Member.

#### B. EFFICIENT ALERT SYSTEM THAT RENDERS PROCESSING BY MEMBERS EASIER

21. In order to make such an electronic system useful to the other Members, the EU is of the opinion that an efficient alert system through which Members would receive the notifications should be put in place.

22. In the light of the large number of notifications and information to be processed, it would be useful to "standardize" certain information provided by Members in order to enable automatic IT processing to the greatest possible extent, thereby avoiding that every Member has to manually process the incoming notifications and, therefore, easing the work of the Enquiry Points.

23. The first improvement could be to allow that the IT system automatically extracts and indicates the final date for comments given by the notifying WTO Member. This could be achieved if all Members would indicate the exact final date for comments which the system could automatically extract out of the notification form. The indication of the final date for comments presupposes that the above-mentioned notification possibility works and that the notifications are circulated after a definite period of time (i.e. equal for all notifications) once they have been submitted by a Member. This would mean that Members do not need to check the notification forms individually and manually register the final date for comments, as is the case at the moment.

24. The second major improvement which could be achieved is the indication of products covered by the notification (point 4 of the notification form). At the moment, Members are invited to indicate either the Harmonized System – Codes (HS), the Customs Cooperation Council Nomenclature (CCCN) or the International Classification for Standards (ICS) numbers, where applicable. All these repertoires have very detailed categories. This often makes it difficult to indicate the exact codes. For example, EU legislation usually covers a wide range of products falling under different codes. This might also explain why only a few Members actually indicate a specific code under point 4 of the notification form. Furthermore, such detailed indications make it very difficult to process the

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<sup>5</sup> PDF is a universal file format and free to use on any existing platform.

More information on fillable forms: <http://www.adobe.com/products/acrobatpro/create-fillable-pdf-forms.html>

information automatically. This is problematic for example with regard to alert lists that many Members have created in order to dispatch notifications to public authorities or to economic operators.

25. The EU therefore proposes to create a common list of categories, that is precise enough to permit stakeholders to identify specific product areas, but on the other hand is large enough not to oblige the Notification Authority to identify in detail the individual products covered by the notified text or to oblige alert list users to subscribe to a large number of different categories to receive notifications in one field.

26. Members would need to choose one of the pre-defined categories. In consequence, the IT system could provide for an alert list/research system on which Members could choose to receive/see only notifications of a certain category. This would also allow Members to process notifications automatically without being obliged to manually open every notification and classify it according to often nationally defined categories.

27. As an example and a basis for discussion the EU would propose the following categorisation:

AGRICULTURAL PRODUCTS AND FOODSTUFFS  
ALCOHOLIC BEVERAGES  
TOBACCO  
FISHING  
ANIMALS  
CHEMICALS  
PESTICIDES AND PESTICIDES RESIDUES  
PHARMACEUTICALS  
MEDICAL DEVICES  
COSMETICS  
ROAD TRANSPORT (motor vehicles etc.)  
SEA TRANSPORT VESSELS (ships etc.)  
RAIL TRANSPORT (trains etc.)  
AIR TRANSPORT (aircrafts etc.)  
CONSTRUCTION MATERIALS  
ELECTRICAL EQUIPMENT  
ELECTRONIC EQUIPMENT  
RADIO & TELECOMMUNICATION EQUIPMENT  
MECHANICAL EQUIPMENT  
ENERGY PRODUCTS/SYSTEMS  
PETROLEUM  
MINING AND MINERALS  
METALS  
RUBBER  
WOOD AND PAPER  
WATER  
WASTE  
TEXTILES, LEATHER, FOOTWEAR AND FURNISHINGS  
DOMESTIC AND LEISURE EQUIPMENT  
PACKAGING MATERIAL  
ARMS  
MISCELLANEOUS PRODUCTS  
LABELLING (general - not related to a specific product category)  
CONFORMITY ASSESSMENT PROCEDURES (general - not related to a specific product category)

28. It might be necessary to add other categories if too many notifications are received in the miscellaneous products category.

## C. INFORMATION PRESENTED IN A CLEAR AND ACCESSIBLE WAY

29. The EU observes that, while a lot of information related to notified draft measures is currently communicated by Members, much of it following recommendations of the TBT Committee, not all Members actually perceive this information. The EU regularly communicates interesting information through addenda to original notifications, such as substantial modifications introduced during the legislative procedure leading to the final adoption of the notified text, the prolongation of the applicability of certain time-limited measures, the adoption and publication of final texts.

30. The EU is of the opinion that it is important for users of the IT system to be able to easily access all information related to one notification, which means that the notification form, the notified text, available translations, any additional information communicated through corrigenda, addenda or revisions should be accessible on one page, without obliging the user to search in different categories. An example for such a presentation can be found on the EU's TBT website<sup>6</sup>.

## D. POSSIBILITY TO STORE COMMENTS MADE AND ANSWERS GIVEN ON INDIVIDUAL NOTIFICATIONS

31. As the example of the EU's website shows, it would also be possible as a further step to upload in such an IT system all comments issued by Members on a specific notification and the written answers given by the notifying Member. This would effectively implement the recommendation of the Fifth Triennial Review that the *"Committee continues to discuss ways to improve the effective implementation of the provisions of the TBT Agreement on handling of comments, including assessing the feasibility of utilizing the TBT Information Management System (TBT IMS) as a platform where comments on notified measures, and replies thereto, could be posted on a voluntary basis"*<sup>7</sup>.

32. It could also be discussed in this context whether this information would only be available to Members (through a closed IT application that would only be accessible to Members) or also to the public.

## E. STREAMLINING THE USE OF DIFFERENT NOTIFICATION FORMATS

33. The improvement of the IT system and the necessity to provide information in a clear and accessible way (see under sub-section C above) could also lead to a discussion on how and under which format (addendum, corrigendum, revision) modifications or any other information relevant to notified measures should be communicated and therefore how to best give effect to the relevant recommendation of the Fifth Triennial Review<sup>8</sup>.

34. In this respect the EU would like to stress again that in the light of the large amount of information to be processed it should be ensured that communications through addenda, corrigenda and revisions do not need to be opened manually to determine if the addendum contains a new notification (see section II above).

35. In the EU's view amendments to adopted technical regulations or to rules on conformity assessment procedures should be notified in accordance with Article 1.6 of the TBT Agreement to the WTO by sending a new filled in notification form. In the notification form a reference to the previously made notification can be mentioned (including the mention of the document symbol).

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<sup>6</sup> [http://ec.europa.eu/enterprise/tbt/index.cfm?fuseaction=Search.viewDetail&Country\\_ID=EEC&num=362&dspLang=EN&nextpage=1&basdatedeb=&basdatefin=&baspays=EEC&baspays2=&basnotifnum=362&basnotifnum2=&bastypepays=ANY&baskeywords=&fromform=viewBasic](http://ec.europa.eu/enterprise/tbt/index.cfm?fuseaction=Search.viewDetail&Country_ID=EEC&num=362&dspLang=EN&nextpage=1&basdatedeb=&basdatefin=&baspays=EEC&baspays2=&basnotifnum=362&basnotifnum2=&bastypepays=ANY&baskeywords=&fromform=viewBasic)

<sup>7</sup> G/TBT/26, para 42 (d)

<sup>8</sup> G/TBT/26 para 43 (c)

36. Addenda should only be used to ensure the follow-up of information about the original notification (i.e. prolongation of the applicability of legislation, changes introduced during the legislative process (without reopening a new comment period), adoption and publication).

37. Revisions could be used if the notified draft text has been substantially amended in the adoption process and is being replaced by a new notification, thereby re-opening an additional comment period for other Members.

38. Corrigenda should be used to correct errors in the notification format.

F. IMPROVED LINKS WITH MEMBERS' WEBSITES AND DATABASES

39. In recent years many WTO Members developed their own databases and/or websites to be able to manage the increasing number of notifications and disseminate them at their national level, but also to spread information to stakeholders. One of the biggest challenges is to get the new WTO documents and notifications as soon as they are available in the WTO Information Management System.

40. An improved IT system should let WTO Members' databases easily and automatically get those documents via web services or any similar manner. Moreover, in view of an upcoming electronic notification system, Members should also be allowed to transfer and upload any information (i.e. new notification) from their own databases directly onto the IT system.

41. More generally speaking, the IT system should provide an API<sup>9</sup> or a set of web services<sup>10</sup> to let WTO Members' IT systems interact with the TBT database.

42. *In the light of these reflections, the EU suggests that the Committee should take the opportunity of the Sixth Triennial Review to discuss the creation of a common IT system that would contribute to the effective implementation of the notification obligations of the TBT Agreement and Members' concrete expectations for such a system. The Committee could also decide to dedicate the next special meeting on procedures for information exchange to a discussion on these expectations and proposals.*

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<sup>9</sup> [http://en.wikipedia.org/wiki/Application\\_programming\\_interface](http://en.wikipedia.org/wiki/Application_programming_interface)

<sup>10</sup> [http://en.wikipedia.org/wiki/Web\\_service](http://en.wikipedia.org/wiki/Web_service)